IN THE

Supreme Court of the United States

October Term, 1957.

No. 107.

ELIZABETH DONNER HANSON, Individually, as Executrix of the Will of Dora Browning Donner, Deceased, and as Guardian ad Litem for JOSEPH DONNER WINSOR and DONNER HANSON, and WILLIAM DONNER ROOSEVELT, Individually,

Appellants,

v.

KATHERINE N. R. DENCKLA, Individually, and ELWYN L. MIDDLETON, as Guardian of the property of DOROTHY BROWNING STEWART, Also Known as DOROTHY B. STEWART and DOROTHY B. RODGERS STEWART, an Incompetent Person,

Appellees.

APPELLANTS' REPLY BRIEF.

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APPELLANTS' REPLY BRIEF.

GENERAL COMMENTS.

Appellees' brief seeks to perpetuate the fallacy of the Florida Supreme Court decision, namely that the Florida Courts had jurisdiction of this action by reason of its probate of Mrs. Donner's will. We reiterate that no action was necessary "to determine what personal property passed under the residuary clause" (A. B. 1)[1] of Mrs. Donner's will for it is crystal clear that all property which she had not disposed of in her lifetime passed under that will. The only question for decision by any court was whether the powers appointing property in a Delaware Trust were valid. That question was solely for the Delaware Courts since it was there and only there that the Trustee could be made to account or a receiver appointed for the trust assets which have never left that State.

Appellees attempt to befog that issue by charging Mrs. Hanson with bad faith and by criticizing her for having many "hats" (A. B. 2). Mrs. Hanson was entrusted by her mother, when she named her executrix of her estate, with the *one and paramount duty of seeing that her property was disposed of in accordance with her expressed wishes and intent.* Her every act has been consistent with that trust.

Appellees, although fully advised of the extent and nature of Mrs. Donner's estate and her trust immediately following her death (R. 76, 79), made no claims that the powers of appointment were invalid or demands that the Executrix recover the appointed property until they filed their complaint herein more than fourteen months after the death of Mrs. Donner.

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1. The following references are used throughout this brief, Appellees' Brief: A. B.; Record: R; Appellants' Main Brief: M. B.

Although fully advised of all the facts at the time of the filing of the complaint, Appellees did not oppose Mrs. Hanson's appointment as guardian ad litem for her minor children, Joseph and Donner, and we submit that the Florida equity court would not have appointed her if it had considered that she would thereby be faced with conflicting responsibilities (R. 39).

Finally after the Florida Courts (both Trial and Supreme) had determined to delay the determination of the fundamental question of jurisdiction, Mrs. Hanson attempted to perform the "duty" charged to her by Appellees "to capture" the Delaware assets by bringing suit in Delaware. Appellees succeeded in having the Florida Trial Court enjoin her, a rather futile act since her Delaware action was simply an interpleader, until Appellees' children, not only appeared and defended but filed Cross-Claims asking for money judgments against the Wilmington Trust Company and Delaware Trust Company and a counterclaim for $417,000.00 against the Executrix (A. 66). When Mrs. Hanson attempted to defend against the counterclaim, Appellees cited her for contempt of the Florida injunction. They further attempted to impede the progress of the Delaware action by failing to appear and answer (R. 176) and by causing their children to file a motion to dismiss which was later abandoned (R. 157, 158).

Appellees state that Mrs. Hanson filed her action in Delaware because she was dissatisfied with the findings of the Florida Court. *The fact is that at the time of the filing of that action no finding had been made or action taken by the Florida Courts other than the deference of the determination of the question of jurisdiction until hearing on the merits.* They further had the audacity to charge in the Supreme Court of Florida that the Delaware action "was merely a sham and was filed by [Mrs. Hanson] in order to deprive the Florida Courts of jurisdiction and for the purpose of trying to lose the case in Delaware and then claim in the Florida Courts that she could not recover said trust assets" (R. 175). In addressing this

Court they temper their charge by merely characterizing appellants action as "an unconscionable attempt on the part of appellants to oust the Florida Courts of the power to administer the estate of a Florida citizen * * *" (A. B. 13). The record does not support this charge. On the contrary it demonstrates that Mrs. Hanson at all times strove to carry out her trust to see that her mother's property reached the persons chosen by her mother to receive it as expeditiously as possible.

On the other side we find that Appellees were unwilling to defend in the Delaware Court but used their children, whose interests are remote, to delay the progress of the Delaware action in their self-initiated race for an early Florida decision (R. 157). Finally, Appellees admit that the Florida judgment is of itself unenforceable but will require ancillary proceedings saying:

> "It left open, to be later followed up if desired by any party, any necessary proceedings to implement the decision. Conceivably such later proceedings might mean additional litigation in Florida or *elsewhere*,[2] to give effect to the *declaration of rights*, but they are not now before this court or the courts below." (A. B. 8) (Emphasis supplied.)

This language points up the whole vice of Appellees' position. Necessary parties were absent to the Florida proceedings. These parties are bound by the judgment of the Delaware Courts applying Delaware law to a Delaware trust which this Court will not review. Consequently, the decision of the Florida Supreme Court is a decision *in vacuo*.

Here, we point out, Appellees subscribe to our plea that this Court in its determination of this appeal put an end to this litigation when they say under the

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2 Where, but Delaware?

heading of "Full Faith and Credit" citing *Riley v. New York Trust Co.*, 315 U. S. 343:

> "The requirements of substantial justice are that a matter having once been litigated between parties ought to be laid to rest forever." (A. B. 17.)

The matter was *fully* litigated with *all* parties present in *Delaware* whose jurisdiction as to both person and property has not been questioned and the judgments of the Court of that State are final and binding on all parties. Appellees, realizing this, have threatened to surcharge Mrs. Hanson continually throughout the proceedings.

ANSWER TO APPELLEES POINTS.

We now categorically demonstrate the fallacies of the points made in Appellees brief:

POINT I.

THIS COURT HAS JURISDICTION OF THE APPEAL.

1. The Appeal Presents Substantial Federal Questions.

The Florida Supreme Court by its assertion of jurisdiction over non-resident *indispensable parties* through purported service under the provisions of Florida Statutes (1953) 48.01 and 48.02, under the guise of construing an *unambiguous* will, is attempting to take Appellants' and the non-residents' property without extending to them the due process guaranteed to them by the Fourteenth Amendment.

The *Liberty Warehouse* and *Smith*[3] decisions of this Court relied on by Appellees (A. B. 7) are not concerned with the absence of *indispensable parties* and are not ap-

3. Liberty Warehouse Co. v. Burley Tobacco Growers Co-op Marketing Association, (1928) 276 U. S. 71, Smith v. Indiana, (1903) 191 U. S. 138.

plicable to this appeal (M. B. 20-22, Steel Brief No. 177, 21). We submit that the Florida Supreme Court must have recognized that in the absence of Wilmington Trust Company and the non-resident appointees, its judgment would be futile, and for that reason it necessarily had to reverse the Trial Court's decision that it had no jurisdiction over these parties in order to reach its end result.

Finally, Appellees ignore the teachings of this Court that failure to apply the proper state law is a violation of due process (M. B. 26, Steel Brief 117, 28).

2. The Federal Questions Were Timely and Properly Raised and Expressly Passed Upon.

We again point out that the jurisdiction of the Florida Court was raised in Appellants' first pleading and throughout the proceedings. When, on April 5, 1954, ruling on their motion to dismiss was deferred until the hearing on the merits, they petitioned the Florida Supreme Court for certiorari, without success. The Court's jurisdiction was then raised as a separate defense in their answer and in their separate motion to stay the action during the pendency of the Delaware action. When this motion was denied on August 25, 1954, they again petitioned the Supreme Court for certiorari, without success. At the hearing on the merits the question was argued and decided by the Trial Court which held in its Summary Final Decree dated January 14, 1955 that it had no jurisdiction over the Trustee, the trust res, or the non-resident appointees. It was re-argued before the Trial Court in an effort to convince that court that it could not render a final enforceable decree in the absence of indispensable parties and the trust res. It, and the further questions of the Constitutional right to full faith and credit of the judgment of the Delaware Courts, were argued before the Supreme Court on March 27, 1956, and were ruled upon by that court in its opinion of September 19, 1956. Finally,

the Federal questions raised in this appeal were again presented to the Supreme Court in Appellants' petition for rehearing which was denied by order of that Court dated November 28, 1956, which by its terms recites that the petition "has been considered".

3. The Judgment Appealed From Rests on an Adequate Federal Basis.

Appellants have bottomed this appeal on three individually adequate Federal grounds.

(a) Lack of due process under the Fourteenth Amendment.

(b) Failure of the Florida Courts to give full faith and credit to the judgment of the Delaware Courts in violation of Article Fourth of the Constitution.

(c) Failure to apply the proper state law in violation of the Fourteenth Amendment.

We submit that if this Court should consider that Appellants could not independently raise the question of the Florida court's jurisdiction over absent *indispensable parties,* then this Court should grant certiorari under the provisions of 28 U. S. C., Sec. 2103.

POINT II.

THE FLORIDA COURTS HAD NO JURISDICTION OF THE TRUST RES OR INDISPENSABLE PARTIES.

Appellees, in their argument under this point, again reiterate the fallacy of their whole position, namely that the will is the res and the panacea of all jurisdictional problems in this action. We again emphasize that the only res which commands the attention of any court is the trust fund which is in the hands of a Delaware Trustee in Dela-

ware.[4] The Trustee is, as we have demonstrated, an indispensable party and could not be reached by either personal or substituted process in Florida.

Appellees are not aided by Chapter 87, Florida Statutes providing for declaratory judgments, since the Florida Supreme Court has determined in *Ake v. Chancery* (1943) 152 Fla. 677, 13 So. 2d 6, in which the plaintiff attempted to justify constructive service against a non-resident defendant on the ground that declaratory relief was sought, that:

> "Furthermore a declaratory decree must be predicated on a claim supported by a res."

Appellees seek solace in the decisions of this Court in *McGee v. International Life Ins.*, 50 Oct. T. 1957 (decided 12/16/57), *International Shoe Company v. Washington* (1945), 326 U. S. 310 and *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U. S. 306.[5] We submit that these decisions were bottomed on clearly distinguishable facts from those in this action but when properly applied to the facts in this action support Appellants' position. In the McGee decision this Court after referring to the requirement set forth in the International Shoe decision that a

4. Appellees again attempt to vitalize their position by pointing out that the Executrix included the trust assets in the estate's inventory and appraisement (AB 10). This was for tax purposes, was so explained (R. 78) and was summarily disposed of by the Florida Trial Court (R. 110).

5. *Demorest v. City Bank Farmers Trust Co.*, (1944) 321 U. S. 36 and *Rubin v. Irving Trust Co.*, (N. Y. 1952) 113 N. E. 2d 424 are not authorities for the statement for which they are cited. Demorest held that New York had the right to devise new and reasonable directions to Trustees of New York trusts pointing out (as is true of Delaware in this case) that "under the law of New York the whole legal estate vests in the trustee for the purpose of the trust". Rubin merely held that "a contract to make or refrain from altering a will amounts for all practical purposes to a testamentary disposition." In this action a validly executed and existing trust is involved, a fact which even the Florida Supreme Court was forced to admit insofar as it created the life estate in Mrs. Donner.

defendant "must have certain minimum contacts with it [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice,'" held in substance that a non-resident insurance company selling insurance by mail to a small policy holder in California had established such minimum contacts as would permit it to be constitutionally served under a statute of that state permitting notice of suit on such insurance policies by mail. The *International Shoe* case turned largely on the amount of business and the character of the representation which the company had in the state. In its decision in the latter case this Court pointed out a consideration which is significant in this action, namely the weighing of conveniences saying:

> "* * * An estimate of the 'inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."

Wilmington Trust Company is a Delaware company, the activities of which are centered in the State of Delaware, are limited by its laws and are supervised by its agencies. In this action it is the trustee of a trust which has its "home" in Delaware and as such it is subject to the control of the Delaware Chancery Court. It has no contact with Florida either directly or indirectly, and Florida has no process by which it can control its activities. The Delaware Chancellor properly held:

> "Since the purported Trust was created in Delaware and since the assets have been held by the Trustee in Delaware at all times, the 'home' of the Trust is in Delaware and its validity must be determined by the law of Delaware" (R. 148).

The finding of the Delaware Chancellor finds support in the decision of this Court in the *Mullane* case, in which it said:

"* * * It is sufficient to observe that whatever the technical definition of its chosen procedure, the interest of each state in providing means to close trusts which exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interest of all claimants, resident or non-resident provided its procedure accords full opportunity to appear and be heard."

The Delaware Trust Company as Trustee and the remaining appointees of the trust assets are equally indispensable parties to the decision of the validity of the trust and none of them possesses even minimum contacts with Florida (M. B. 21).[6]

Finally appellees point up the infirmity of their position when they argue that Appellants would have this Court hold that the Delaware Courts could overrule the Florida Courts on "practical administration problems of a Florida estate of a Florida decedent" (A. B. 10). This action does not involve administration problems and in fact there are none. The Federal Estate Tax Law requires the assets of a revocable trust to be included in the gross estate for purpose of taxation. The Florida Estate Tax Law requires the payment to that State of the amount of the credit allowable for the payment of State taxes under the Federal Estate Tax Law. The executrix concedes that the trust assets should be excluded in fixing her attorneys and her fees, (R. 75) and it is apparent that Florida creditors could not reach assets in Delaware which do not belong to the estate. The assets are not a part of "a Florida Estate" if they pass under a valid Delaware Trust. To again repeat, the validity of the Delaware Trust is the only ques-

6. The "center of gravity" theory of conflicts applied by the New York Court of Appeals in the Rubin case cited by Appellees (note 3, *supra*) would leave no doubt of the fact that the law of Delaware is the proper law and Delaware the proper forum for the determination of the validity of the trust.

tion for decision and this Court has held in both the Demorest and Mullane cases cited by Appellees, that the decision of the state which is the "home" of the trust is controlling.

POINT III.

THE DECREE OF THE FLORIDA SUPREME COURT SHOULD RECEIVE NO FAITH OR CREDIT.

Under this point, Appellees, after insisting in Point I that Appellants' Questions iv (refusal of the Florida Supreme Court to apply Delaware Law), v (holding of that Court that the trust was valid and was republished in Florida by the questioned appointments for the sole purpose of acquiring jurisdiction to declare the trust invalid) and vi (reaching by that Court of a decision which is lacking in comity and unenforceable) "are clearly matters of state law", inconsistently argue the question of the validity of the trust. We submit that the "disquisition" of the Florida Supreme Court is completely meaningless and ineffective because of its lack of jurisdiction as well as its inability to enforce its decree. In passing, however, we point to an example of the "double talk" which Appellees have used continuously throughout this action. They say:

> "Thus, the donor-testatrix, focused all her dispositions in her will and made Florida her domiciliary State * * * so that full devolution of her property might take place *according to her written directions.*" (Emphasis supplied.)

but their every effort has been to thwart the *written directions* and the expressed wishes and desires of Mrs. Donner in disposing of her property.

We submit that the strained arguments of Appellees in their attempt to destroy the trust and the powers appointing its property fail hopelessly when measured by the

rules pronounced by the Delaware Courts, the jurisdiction of which is unquestioned, in applying Delaware Law to a Delaware Trust.

Respectfully submitted,

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